

1 The Honorable John H. Chun
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7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT SEATTLE**

10 FEDERAL TRADE COMMISSION,

11 Plaintiff,

12 v.

13 AMAZON.COM, INC., *et al.*,

14 Defendants.

15 **Case No. 2:23-cv-0932**

16 **STIPULATED MOTION TO SEAL**
17 **PLAINTIFF'S OPPOSITION TO**
18 **DEFENDANTS' MOTIONS FOR**
19 **SUMMARY JUDGMENT AND TO**
20 **EXCLUDE EXPERT WITNESS**
21 **TESTIMONY**

22 **NOTE ON MOTION CALENDAR:**
23 June 17, 2025

24 Pursuant to Local Civil Rule 5(g), Plaintiff Federal Trade Commission (“Plaintiff” or
25 “FTC”) and Defendant Amazon.com, Inc. (“Defendant” or “Amazon”) respectfully jointly move
26 the Court to seal certain documents, or excerpts thereof, cited in Plaintiff’s Opposition to
27 Defendants’ Motions for Summary Judgment (the “MSJ Opposition”) and Plaintiff’s Oppositions
28 to Defendants’ motions to exclude testimony of certain of Plaintiff’s proposed expert witnesses
29 (the “*Daubert* Oppositions”) (collectively, the “Oppositions”). In support of this Stipulated
30 Motion, Plaintiff and Defendant state as follows.

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32 PLAINTIFF'S OPPOSITION TO SUMMARY
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37 Washington, DC 20580
38 (202) 326-3320

1 1. On May 27, 2025, the FTC filed under seal unredacted versions of the
 2 Oppositions and the accompanying Declaration of Evan Mendelson (“Mendelson Declaration”).
 3 The FTC also has filed redacted, public versions of these materials.

4 2. The FTC and Amazon jointly move to seal materials cited in the Opposition,
 5 which are identified in the chart below and attached to the Mendelson Declaration. The
 6 proposed sealed portions are highlighted in blue in the unredacted Oppositions and the exhibits
 7 attached to the unredacted Mendelson Declaration, all of which are being filed under seal.

8 3. The Court’s Protective Order (ECF No. 124 ¶ 5.4) and Local Rule 5(g)(3)(B)
 9 require that the Party seeking to file information under seal provide (1) a statement of the
 10 applicable legal standard, (2) the legitimate private or public interests that warrant the relief
 11 sought, (3) the injury that will result if the relief sought is not granted, and (4) why a less
 12 restrictive alternative to the relief sought is not sufficient. Amazon submits paragraphs 4-7 in
 13 accordance with these requirements.

14 4. A party seeking to seal documents attached to a non-dispositive motion need only
 15 show “good cause” to keep the documents from public view because “the public has less of a
 16 need for access to court records attached only to non-dispositive motions.” *Kamakana v. City &*
17 Cnty. of Honolulu, 447 F.3d 1172, 1179 (9th Cir. 2006); *Center for Auto Safety v. Chrysler*
18 Group, LLC, 809 F.3d 1092, 1097 (9th Cir. 2016) (“good cause” standard applies to non-
 19 dispositive motion unrelated to the merits of the case). The *Daubert* Motions are non-dispositive
 20 motions. To show good cause, the moving party must articulate a specific harm that would occur
 21 if the subject information was made public. *See Phillips v. General Motors Corp.*, 307 F.3d
 22 1206, 1213 (9th Cir. 2002). The Court may seal documents attached to dispositive motions when
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1 a party provides a compelling reason to keep information out of public view. *Kamakana*, 447
 2 F.3d at 1178. Under the heightened “compelling reasons” standard, courts have long recognized
 3 that “business information that might harm a litigant’s competitive standing” should be sealed.
 4 *See, e.g., Nixon v. Warner Commnc’ns, Inc.*, 435 U.S. 589, 598 (1978).

5. Amazon’s legitimate business interests warrant the relief sought. Amazon seeks
 6 to seal only limited confidential business information, such as internal metrics and proprietary
 7 internal analyses, similar to those described in Amazon’s declaration in support of its earlier
 8 motion to seal. *See* ECF No. 42. This Court granted a motion to seal similar information under a
 9 heightened “compelling reasons” standard in this case. *See* ECF No. 79. This Court also granted
 10 a motion to seal similar information under the “good cause” standard applicable to discovery
 11 motions. *See* ECF No. 164. The limited information that Amazon seeks to seal thus easily
 12 satisfies the applicable standards. For the Sealed Material, Amazon further takes the following
 13 positions:

Document	Amazon’s Position
Hills Dep. Ex. 2 (Attachment 152 to Mendelson Declaration)	Proposed redactions are necessary to protect highly sensitive commercial information.
Hills Dep. Ex. 3 (Attachment 153 to Mendelson Declaration)	Proposed redactions are necessary to protect highly sensitive commercial information.
Hills Dep. Ex. 4 (Attachment 154 to Mendelson Declaration)	Proposed redactions are necessary to protect highly sensitive commercial information.
Hills Dep. Ex. 5 (Attachment 155 to Mendelson Declaration)	Proposed redactions are necessary to protect highly sensitive commercial information.
Hills Dep. Ex. 6 (Attachment 156 to Mendelson Declaration)	Proposed redactions are necessary to protect highly sensitive commercial information.

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Document	Amazon's Position
Johnson Dep. Ex. 5 (Attachment 165 to Mendelson Declaration)	Proposed redactions are necessary to protect highly sensitive commercial information.
Johnson Dep. Ex. 7 (Attachment 166 to Mendelson Declaration)	Proposed redactions are necessary to protect highly sensitive commercial information.
Kim Dep. Ex. 27 (Attachment 177 to Mendelson Declaration)	Proposed redactions are necessary to protect highly sensitive commercial information.
Kim Dep. Ex. 28 (Attachment 178 to Mendelson Declaration)	Proposed redactions are necessary to protect highly sensitive commercial information.
FTCAMZN_0016534 (Attachment 180 to Mendelson Declaration)	Proposed redactions are necessary to protect highly sensitive commercial information.
AMZN-PRM-FTC- 000286836 (Attachment 181 to Mendelson Declaration)	Proposed redactions are necessary to protect highly sensitive commercial information.
AMZN-PRM-FTC- 001168367 (Attachment 193 to Mendelson Declaration)	Proposed redactions are necessary to protect highly sensitive commercial information.
Excerpt from AMZN_00095809 (Attachment 159 to Mendelson Declaration)	Proposed redactions are necessary to protect personally identifiable content.
Expert Report of Neale Mahoney (Attachment 215 to Mendelson Declaration)	Proposed redactions are necessary to protect highly sensitive commercial information.
Excerpts from AMZN- PRM-FTC-000346785 (Attachment 202 to Mendelson Declaration)	Proposed redactions are necessary to protect personally identifiable content.
Excerpts from Deposition of Reid Nelson (Attachment 214 to Mendelson Declaration)	Proposed redactions are necessary to protect highly sensitive commercial information.
Excerpts from Deposition of David Edelstein (Attachment	Proposed redactions are necessary to protect highly sensitive commercial information.

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Document	Amazon's Position
213 to Mendelson Declaration)	
AMZN-PRM-FTC-002903588 (Attachment 172 to Mendelson Declaration)	Proposed redactions are necessary to protect highly sensitive commercial information.
AMZN-PRM-FTC-000286862 (Attachment 182 to Mendelson Declaration)	Proposed redactions are necessary to protect highly sensitive commercial information.

7 6. As explained in Amazon's original motion to seal similar information, which the
 8 Court granted, the public release of this information would harm Amazon's competitive position.
 9 See ECF No. 41. The risk of Amazon's competitors using this commercially sensitive
 10 information to their own advantage significantly outweighs any limited public interest in public
 11 disclosure of these few discrete pieces of information. *See, e.g., McCrary v. Elations Co. LLC*,
 12 2014 WL 12589137, at *6 (C.D. Cal. Dec. 2, 2014) (sealing internal clinical studies and
 13 consumer surveys because "disclosure of these documents could benefit Defendant's competitors
 14 and reduce any business advantage that Defendant currently possesses").

15 7. There is no less restrictive alternative to sealing the discrete pieces of information
 16 that Amazon has identified. Amazon has applied only limited redactions. This approach is
 17 aligned with the previous redactions and sealed filings that Amazon sought and this Court
 18 granted. *See* ECF Nos. 41, 79, 164, 219, 233, 253, 267.

19 8. The FTC stipulates to filing under seal the documents or portions of documents
 20 identified above. It takes no position as to Amazon's assertions in paragraphs 4-7 above.

21 9. The FTC also intends to file complete copies of the deposition and investigational
 22 hearing transcripts of Reid Nelson and David Edelstein, so that the Court can review the

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1 transcripts if it chooses. The FTC will publicly file the excerpts of those transcripts that the FTC
 2 explicitly references in the Oppositions. The parties request that, for efficiency, the remaining
 3 portions of the transcripts—those not explicitly referenced in the Oppositions—be filed under
 4 seal.

5 10. Based on the foregoing, the parties respectfully request that the Court grant this
 6 stipulated motion through entry of the attached Proposed Order.

7 IT IS SO STIPULATED.

8 **LOCAL RULES 5(g)(3)(A), 7(e) CERTIFICATION**

9 Pursuant to Local Rule 5(g)(3)(A), undersigned counsel certify that they met and
 10 conferred by email from June 10-17, 2025 to reach the agreement described in this stipulated
 11 motion.

12 Undersigned counsel also certify that this memorandum contains 1,587 words, in
 13 compliance with the Local Civil Rules.

14 Dated: June 17, 2025

/s/ Evan Mendelson

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